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# IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

No. 263

LEROY CRUMLEY, alias LEO CRUMLEY,
*Petitioner*

vs.

STATE OF ALABAMA,
*Respondent*

## PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF ALABAMA

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TO THE HONORABLE, THE CHIEF JUSTICE OF THE UNITED STATES AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Your petitioner, LEROY CRUMLEY, alias LEO CRUMLEY, prays that a writ of certiorari be issued out and under the seal of this Court to review the judgment and opinion of the Court of Appeals of the State of Alabama, entered in this case on the 7th of January, 1969, which affirmed the conviction of petitioner by a jury in the Circuit Court, Houston County, Alabama, for the crime of burglary in the second degree and the resulting sentence to the penitentiary for a term of seven years.

An application for rehearing in the Court of Appeals of Alabama was denied on the 28th of January, 1969.

A Petition for Certiorari in the Supreme Court of Alabama was denied by that court on the 13th of March, 1969, and an application for rehearing was denied on the 10th of April, 1969.

## Opinions Below

The opinion of the Court of Appeals of Alabama is reported at 220 So2d 862 (Ala. 1969), and the opinion of the Supreme Court of Alabama in its denial of the petition for writ of *certiorari* is reported at 220 So2d 868 (Ala. 1969). These opinions are also appended hereto as Appendix A. No opinion was written by either court in denying rehearing.

## Jurisdiction

The judgment of the Court of Appeals of Alabama was entered on the 7th of January, 1969 (Appendix A, p. A10). A timely application for rehearing was filed on the 21st of January, 1969, and denied on the 28th of January, 1969 (Appendix A, p. A10).

The judgment of the Supreme Court of Alabama in denying the petition for writ of *certiorari* was entered on the 13th of March, 1969 (Appendix A, p. A12). The timely application for rehearing was filed on March, 1969, and denied on the 10th of April, 1969 (Appendix A, p. A13).

The statutory provision believed to confer on this Court jurisdiction to review the judgment in question is 28 U.S.C. Sec. 1257(3).

## Question Presented for Review

Whether or not the use in evidence of the petitioner's inculpatory admissions to police officers obtained through an apparent in-custody interrogation in the absence of *Miranda* warnings violated the self-incrimination clause of the Fifth Amendment, United States Constitution, as the same is made applicable to the State of Alabama by operation of the Fourteenth Amendment, United States Constitution.

## Constitutional Provisions Involved

A.

The Fifth Amendment, United States Constitution, in part:

"No person***shall be compelled in any criminal case to be a witness against himself."

B.

The Fourteenth Amendment, United States Constitution, Section 1, Clause 2:

"***nor shall any State deprive any person of life, liberty, or property, without due process of law;***"

## Statement Of The Case

Petitioner CRUMLEY was charged with the offense of burglary in the second degree by the grand jury of the Circuit Court, Houston County, Alabama, on the 10th of March, 1967 (R. 1).

Trial of CRUMLEY commenced on the 11th of May, 1967; he pleaded not guilty; a jury found him guilty; he was sentenced to the penitentiary for a term of seven years (R. 2-3).

In its opinion accompanying the judgment affirming this conviction, the Court of Appeals of Alabama stressed, with considerable emphasis, an in-custody statement made by CRUMLEY (R. 209-210). This particular portion of the opinion dealt with the overruling by the trial court of the motion of CRUMLEY to exclude the state's evidence:

"In *Wildman*, 42 Ala. App. 357, 165 So.2d 396, we reached such a conclusion (*i.e.*, the State's evidence should have been excluded) in respect of circuit court cases numbered 5337 and 5340. (Paren. added).

"Some of the aspects distinguishing the instant case from *Wildman*, supra:

* * *

"7. Berry's testimony as to Crumley's enquiring of him (while Crumley and the others were in the Covington

County jail) R. 111: 'He asked what we were doing with the stuff we were taking out of the car.'

"This last conversation can be interpreted in different ways. Crumley's intonation in expressing 'the stuff' (if those were his exact words) could be either innocent or possessive in connotation and hence, if possessive, then inculpatory. That is, in the context used or in the emphasis of intonation, the definite article 'the' might be the equivalent of 'my' or 'our' as equally as it might have no qualification other than to make clear that the 'stuff' came from the car.

"Ordinarily, we should incline to the latter view. Here, however, the trial judge in another ruling seems to have got the impression that 'the' was used in the sense of 'our'. R. 172.

"Certainly, the concern underlying this query tends to negative innocence as much as it might reflect mere idle curiosity on Crumley's part. This we take to be the implication of the conclusion of the above quoted part of the State's brief.***" (Appendix, p. A5 thru A6).

The facts in the record belie the conclusion reached by Judge Cates, the writer of the opinion for the Court of Appeals of Alabama, as to the impression of the trial judge. From R. 111 we excerpt the following:

"Q What was the statement that the defendant made to you at the time?

"A He asked me what we were doing with the stuff we were taking out of the car.

"Q He asked you what you were doing with his stuff you were taking out of the car?

"A No, he didn't say 'his'! He asked what we were doing—.

"THE COURT: Now, don't put words in the mouth of this witness.

"A He asked what we were doing with the stuff we were taking out of the car.

"MR. SMITH: We move to exclude that statement on the grounds it is prejudicial and there has not been a proper predicate laid or the defendant appraised of his constitutional rights and tends to be confessory in nature and might incriminate the defendant.

"THE COURT: Overrule your objection."

The testimony of Chief Deputy Sheriff Arel Berry (R. 99, *et seq.*) is conclusive of the fact that *Miranda* warnings were not given in a situation which lent itself to inculpatory admissions by petitioner CRUMLEY. Throughout the questioning of Berry strenuous objections were interposed on federal constitutional grounds (*e.g.*, R. 107), and consistently overruled by the trial court.

Furthermore, the testimony of Sheriff Gantt (R. 109-110) shows without question that *Miranda* warnings were not given prior to the utterance of the admittedly confessional statements by petitioner CRUMLEY.

Nonetheless, over objection, the trial court allowed such statements into evidence, and the Court of Appeals of Alabama held this was without error, *supra.*

Thus, at CRUMLEY'S trial, held after the effective date of the decision of this Court in *Miranda v. Arizona*, 384 US 436, the trial court allowed a police officer who was present when the inculpatory statement was made, over CRUMLEY'S timely and pertinent objection, to relate the statement considered so vital by the Court of Appeals of Alabama to sustain his conviction.

## Reasons for Granting the Writ

The warnings described in and required by *Miranda* were under consideration once again by this Court in *Orozco v. Texas*, __ US __ (OT, 1968, No. 641, decided March 25, 1969).

And, once again, this Court reiterated its conclusion that the use of in-custody admissions obtained in the absence of *Miranda* warnings constituted a "flat violation" of the Fifth Amendment self-incrimination clause.

There is no question in this case but that the petitioner CRUMLEY was in custody of police officers.

Petitioner construes the record to reveal that two alternative approaches can be made to the question presented here. (1) The record does not demonstrate clearly that the inculpatory statement was the exclusive product of police interrogation; but CRUMLEY submits that the totality of circumstances surrounding the uttering of the statement shows that it was made in an atmosphere which elicited such statements as surely as though direct questions had been asked. (2) In the absence of *Miranda* warnings, the record does not reveal a clear, intelligent waiver of the federal constitutional rights involved.

As to the first alternative approach, Deputy Sheriff Berry testified that he unloaded an automobile where CRUMLEY could observe such unloading from his place of incarceration in the bullpen of the county jail (R. 105). After the unloading, the witness had a conversation with CRUMLEY in that bull pen, at which time the inculpatory statement was made (R. 106, *et seq.*)

The exact nature of the conversation is not in the record, but a logical surmise would be that it contained, in part at least, interrogation about the items found during the unloading of the automobile.

After having observed the unloading, CRUMLEY was placed in the position of confrontation with the officer who accomplished the unloading. It seems implicit that in such circumstances any conversation entered into by the officer with CRUMLEY had definite interrogative overtones. It is, then, on this basis that the contention is advanced that the *Miranda* warnings should have been given. The position is fortified when due consideration is given to the fact that Deputy Sheriff Berry was the instrument the State of Alabama utilized in introducing the items obtained from the automobile into evidence.

As to the second alternative approach, it is extremely questionable whether CRUMLEY had the remotest conception that an appellate court would seize upon a logically innocuous statement as a cornerstone to affirm his conviction. To thus use the statement, obtained in an admitted conversation with a police officer, without *Miranda* warnings, is tantamount to a trap. Certainly, CRUMLEY was

not aware that his statement was anything but an innocent inquiry, as the Court of Appeals of Alabama was at first inclined to conclude. It then, after the clear statement of the trial judge as set forth above at the time the statement was testified to, referred to a passing remark (R. 172) made outside the presence of the jury, and reached the inculpatory conclusion. Hence, CRUMLEY could not have waived his federal constitutional rights in this regard, the conclusion of the Court of Appeals of Alabama being somewhat *ex post facto*.

To sanction the use of the statement here involved, would mean, necessarily, that if a suspect did not want to have his innocent statements construed against him by an appellate court in its zeal to affirm a conviction, then that suspect would be most unwise to have any conversation with a police officer, and particularly a conversation which inquired innocently about happenings in and about his place of confinement.

This Court in *Orozco* has indicated its firm adherence to the teachings of *Miranda*. In this case, those teachings are in danger of being swept aside through a consideration of the intonation of a suspect in asking a question, and a conclusion as to that intonation when the suspect exercised his right not to take the witness stand, and the intonation could not possibly have been in the record!

## Conclusion

For the reasons stated, it is submitted the petition for writ of certiorari in this case should be granted.

Respectfully,

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